

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

RMT, INCORPORATED,

Plaintiffs,

v.

Case Number 09-11650-BC  
Honorable Thomas L. Ludington

SPE UTILITY CONTRACTORS L.L.C.,

Defendants.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
AND GRANTING DEFENDANT'S MOTION TO PARTIALLY DISMISS COMPLAINT**

Magistrate Judge Charles E. Binder issued a report and recommendation on August 4, 2009 recommending that Defendant SPE Utility Contractors' motion to dismiss count III [Dkt. # 7] of Plaintiff RMT Incorporated's complaint [Dkt. # 18] be granted. The report and recommendation was served on Plaintiff the same day, starting the ten-day period in which it may object. 28 U.S.C. § 636. Plaintiff did not file an objection within the required time period. A party's failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [Dkt. # 18] is **ADOPTED**.

It is further **ORDERED** that Defendant's motion to partially dismiss the complaint [Dkt. # 7] is **GRANTED**. Count III of Plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: August 27, 2009

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 27, 2009.

s/Tracy A. Jacobs  
TRACY A. JACOBS